

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA

Plaintiff,

:

Case No. 3:09-cr-121

-vs-

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

:

SHAWN LAUDERDALE,

Defendant.

ORDER VACATING ABEYANCE AND ORDERING ANSWER

This case is before the Court on Defendant's Motion to Vacate pursuant to 28 U.S.C. § 2255 (Doc. No. 66).

On May 15, 2013, on initial review, the Magistrate Judge noted the pendency of an appeal by Defendant and ordered the § 2255 Motion be held in abeyance pending decision of the appeal (Doc. No. 67). On July 1, 2013, the Court received notice that the Court of Appeals had affirmed this Court's prior Order denying relief under 18 U.S.C. § 3582. *United States v. Lauderdale*, Case No. 12-3664 (6th Cir. Jun. 28, 2013)(copy at Doc. No. 68). The Court of Appeals having terminated its case, this Court is permitted to exercise jurisdiction over the § 2255 Motion. Accordingly, the Abeyance herein is DISSOLVED.

It does not plainly appear from the face of the motion, the annexed exhibits, and the prior proceedings in the case that Defendant is not entitled to relief. Accordingly, it is hereby ORDERED that the United States Attorney shall, not later than August 1, 2013, file an answer conforming to the requirements of Rule 5 of the Rules Governing §2255 Cases. Specifically,

said answer shall respond to each allegation made in the Motion, raise any affirmative defenses available to the United States, and state whether Defendant has previously received an evidentiary hearing on any of the matters he now raises or whether he is entitled, in the Government's view, to an evidentiary hearing in this proceeding.

Defendant may, not later than twenty-one days after the Answer is filed, file and serve a reply or traverse to the Answer. If the Government files a motion to dismiss, Defendant's time to file a memorandum in opposition will likewise be twenty-one days from service, as provided in S. D. Ohio Civ. R. 7.2(a).

July 2, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge